



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/061,129	11/13/2001	Thomas Tyson Lowery	G04.014	2257
28/062 7590 07/09/2008 BUCKLEY, MASCHOFF & TALWALKAR LLC 50 LOCUST AVENUE NEW CANAAN, CT 06840				
EXAMINER				
RETTA, YIHDEGA				
ART UNIT		PAPER NUMBER		
3622				
MAIL DATE		DELIVERY MODE		
07/09/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/061,129

Applicant(s)

LOWERY, THOMAS TYSON

Examiner

Yehdega Retta

Art Unit

3622

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-12, 14-31 and 59-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14-31 and 59-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

This office action is in response to amendment filed April 8, 2008. Applicant added new claims 59-61. Claims 1-12, 14-31 and 59-61 are pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12, 14-31 and 59-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over powerbuyerservice.com and further in view of Joao (US 20010037205 A1).

Regarding claims 1, 12, 14, 22, 25, 26, 27 and 30, 56-61, Powerbuyerservice teaches receiving initial information about a customer (*wherein the information identifies a service*) for the first part (referral source) (see pages 3-5); wherein the initial information identifies a service and the first party is a referral source (Powerbuyer); identifying second party (service provider) *from a plurality of services* to which to provide the information; providing the second party with the information; receiving updates information regarding said customer (see page 26, also applicant's background page 1). Powerbuyerservice does not teach determining compensation owned by said second party based on at least in part on said updated information and receiving the compensation. Joao teaches the Merchant computer can transmit any and/or all transaction data and/or information such as commissions and/or referral fees due, and/or commissions and/or referral fees paid to, the Content Providers who or which utilize the apparatus of the present

invention ([0002], [009]-[0014], [0022], [0073]. Joao teaches the when it is determined that the user made a purchase or entered into a transaction the merchant calculates transaction commission due to the referring Content Provider. Joao also teaches that the commission can be earned or can be payable to any referring parties including brokers, agents, and/or other referring parties pursuant to any agreed upon terms and/or conditions between the respective parts to the affiliated marketing relationship. *Joao teaches the Merchant computers equipped for processing transactions, to record user information, to ascertain and/or identify referring Content Providers and to maintain transaction and/or referral records and/or information (see [0093])* Joao further teaches the merchant computer transmitting transaction record to the referring Content Provider computer including notification report which notifies the content provider that it has earned a commission and/or referral fee for referring the user to the merchant computer (see [0111] – [0119]). It would have been obvious to one of ordinary skill in the art at the time of the invention to implement Joao's referral and commission tracking system so that the referral service provider of Powerbuyerservice can be paid for the service of referring customers, as taught by Joao (see [0073]. *Joao does not explicitly teach the transaction information includes a postal address of the consumer or a telephone number of the customer. Official notice is taken that is old and well known to include customer address or telephone number in user transaction record. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for the transaction of history of Joao to include such information if it is considered necessary to verify the transaction. The claim recites receiving information regarding a customer lead from a first party other than the customer. The Powerbuyerservicie web site does not exclude anyone from entering user information that might need service. Therefore, the web*

site is equipped to receive information from anyone who wants to enter the information. Applicant, in the background, discloses companies use telemarketers, call centers, marketing agents etc., to generate leads for the company. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to receive the customer information from a referral source, such as telemarketers, call centers or marketing agents and to provide compensation for the service (referral fee), as in Joao, for referring the customer to the service provider.

Regarding claim 2, powerbuyerservice teaches allowing the first party to provide initial information via a web site ... (see page 1-8).

Regarding claim 3, powerbuyerservice teaches allowing the first part to select the second party allowing the first part to identify a service needed (see page 1-8 and applicant's background page 1).

Regarding claims 4-9 and 16-21, powerbuyerservice teaches determining a service associated with the characteristic of the user; identifying a party that can provide a service... (see applicant's background).

Regarding claims 10-11 and 15, 23, 24, 28, 29, 31, powerbuyerservice does not explicitly teach the second party providing the updated information via a web site ...charging fee to the second part per transaction between the customer and second part, it is taught in Joao (see fig. 3, [0109]-[0111], [0114]-[0117]). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the updated information via the web site, as in Joao, since the transaction is performed online or using the website and also to charge fee per transaction based

on the agreement between the referring site and the service provide, as taught in Joao (see [0115]-[0117]).

Response to Arguments

Applicant argues neither powerbuyerservice.com nor Joao nor any proper combination thereof teaches or suggests the method recited in claim 1. Applicant asserts that the Web site provided at www.powerbuyerservice.com allows a customer to select one or more service providers that the customer is interested in learning about and then informs the relevant service providers of the customer's interest.

Applicant also argues because powerbuyerservice.com does not teach or suggest receiving initial information regarding a customer lead from a first party, wherein the initial information identifies a service and the first party is a referral source other than said customer, as recited in claim 1, powerbuyerservice.com cannot possibly teach or suggest a method that includes after receiving the initial information, identifying a second party that can provide the service and to which to provide at least a portion of the initial information, as recited in claim 1. Examiner agrees that Powerbuyerservice.com teaches receiving information about a customer (see pgs 1-5) but does not explicitly teach the information regarding a customer is received specifically from a customer not does it teach the information is received from a first party which is different from the customer. Examiner would like to point out that the powerbuyerservice teaches receiving information about someone who needs help but does not require that information be provided only by the customer. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Powerbuyerservice.com by using

telemarketers, call centers, marketing agents to acquire customers since companies out source the job of finding a prospective customer to telemarketers.

Applicant is also requesting that the Examiner provides support for the assertion that that the powerbuyerservice website does not exclude anyone from entering user information that might need service, and further states that the web site is therefore equipped to receive information from anyone who wants to enter the information. Examiner would like to point out that on pages 1-4 of the reference, the web site of Powerbuyer, requires someone to enter information. The person who needs the service or anyone who knows the information of the person who needs the service can enter the information. Therefore, there is no restriction on who supplies the customer's information on the web site or who collects the customer's information. The information could be collected by a telemarketer. After the information is collected by the telemarketer the service would contact the consumer. If a company outsources telemarketing, the telemarketer contacts the customer and find out the customer needs. The telemarketer passes the information to the company and the company or service provider provides service to the customer. Applicant states that the Applicant has noted the cited portion of Applicant's application, which states that a company may use telemarketers, call centers, marketing agents etc. to generate leads for the company and argues that such statement cannot possibly stand for a universal proposition that would motivate one of ordinary skill in the art to modify powerbuyerservice.com to use a referral source. Examiner respectfully disagrees. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or

motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, since it is well known for companies to hire telemarketer to find leads for their products or services, it would motivate someone to use telemarketers to find qualified leads.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yehdega Retta whose telephone number is (571) 272-6723. The examiner can normally be reached on 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

YR

/Yehdega Retta/
Primary Examiner, Art Unit 3622